

Recent Publications

U.S. Foreign Policy and Nation-Building

The Choice: Global Domination or Global Leadership. By Zbigniew Brzezinski. New York, NY. Basic Books, 2004. Pp. xiii, 242. \$15.00 (Paperback). Reviewed by Benjamin Vogt.

Former National Security Adviser Zbigniew Brzezinski's *The Choice: Global Domination or Global Leadership* offers a captivating, thought-provoking, and convincing analysis of the challenges and responsibilities inherent in the United States's role as "the first and only truly global superpower" (p. x). Set against the complex backdrop of a world shaped by the forces of globalization and the war on terror, the book explores the interlinked phenomena of America's military might, economic centrality, technological advantage, and increasingly pervasive cultural influence, and inquires into the meaning of each of them for both American domestic security and global stability. Such analysis, however, is only one step in Brzezinski's ambitious project. Unlike much academic writing on foreign policy, Brzezinski does not stop at the mere diagnosis of the status quo, but instead systematically parlays his analytical results into concrete policy recommendations. In his view, the United States's uniquely powerful position in today's world entails weighty responsibilities; for Brzezinski, America alone can—and must—take the lead in the establishment of a global community of shared interest. American national security and the stability of the international system are inextricably linked objectives for which the United States must capitalize upon its unprecedented and unparalleled global clout. In order to accomplish what he perceives to be the central challenges for America as a global actor, he argues that the United States must develop a framework for the management of its hegemony that combines adroit multilateralism with a firm strategic posture and an awareness of global developments with a keen understanding of domestic challenges. This precludes both isolationism and unilateral interventionism and instead points the way towards a flexible and sophisticated foreign policy that is guided by a long-term vision of stability resulting from cooperation and sustainable democratization. Such a policy, according to Brzezinski, is only feasible in concerted action with Europe and, moreover, requires wide-reaching efforts to include countries like China, Russia, and Japan.

Brzezinski's analysis is striking for several reasons, not least of all because of its versatility. His account does not fit neatly into any one category and defies easy classification. Part historical and political analysis, part predictive extrapolation, and part prescriptive recommendation, his arguments proceed seamlessly from the level of descriptive investigation to that of normative statements urging clear and well-defined solutions. While never dispensing with the linear cogency of analytical argumentation, the writing at times reads more like a policy memorandum than an academic piece. There is

a tendency in some chapters to confine the critical engagement with the literature and discussion of relevant data to the endnotes, presumably so as not to break the flow of his reasoning. But this perhaps somewhat unconventional approach works; in unfolding his panoramic view of the international system as it is and as it should become, Brzezinski strikes a deft balance between the global scope of his considerations and the level of detail with which he underpins his arguments.

It is clear at every step that this is not the theoretic edifice of an academic mind foreign to the reality of practical politics. Pragmatism colors the discussion, predictions are certainties, and there is little time for cautious qualifications; “maybe” and “perhaps” do not figure prominently when Brzezinski projects ahead in time. He sees future facts, not merely possible developments, and has no qualms about articulating end results where others might only make out nascent trends. Brzezinski’s experience as President Carter’s National Security Adviser clearly informs his analysis throughout. In drawing up the scenarios on which his analysis rests, he moves the pieces on his international chessboard with the natural ease and familiarity of a seasoned foreign policy maker.

The most remarkable aspect of *The Choice*, however, becomes evident only when the book is read as a statement in the ongoing debate over national security, foreign policy, and the ramifications of the war on terror in a post-9/11 world. What is striking about Brzezinski’s conclusions is not so much their novelty, since others have, for instance, urged greater collaboration with Europe and a nuanced approach to the Islamic World. Rather, it is the fact that he succeeds in establishing a counterpoint to the Bush administration’s policy outlook that begins with many of the same principles as the Bush administration—most notably, an uncompromising concern for the national security of the United States—but, by way of rigorous and even-handed argumentation, arrives at largely contrary conclusions. In *The Choice*, Brzezinski demonstrates that hard-nosed foreign policy realism can generate results that are embraced by liberals, while remaining immune to accusations of undue softness.

Brzezinski never downplays the gravity of the danger facing America—and the world—but rejects alarmism at home and jingoism abroad for a more nuanced response. Where others deal in clear-cut dichotomies of good and evil, Brzezinski instead spins a complex web of interconnected objectives and considerations. His discussions of the challenges inherent in the tasks of engaging the Islamic world, pacifying the “Global Balkans,” and managing globalization to prevent its devolution into an ultimately destructive force are models of even-handed reasoning and attention to the long-term effects of today’s policy choices.

Chapter by chapter, Brzezinski develops a stringent realist argument with a strong non-realist appeal that starts from America’s undeniable dominance and proceeds to a call for responsible global leadership. Brzezinski bolsters his case with concrete recommendations for how the interlinked objectives of national security and global stability can be attained, which further underscores the remarkable reach and richness of this stimulating

work. What emerges is a critique of America's present foreign policy course that is as subtle as it is profound and constructive.

The Opportunity: America's Moment to Alter History's Course. By Richard N. Haass. New York: Public Affairs, 2005. Pp. xii, 242. Price: \$25.00 (Hardcover). Reviewed by Chris Mandernach.

Richard N. Haass's new book, *The Opportunity*, describes how and why America now, just as after World War II, must capitalize on a fleeting opportunity to alter history's course. Written almost as a book-length op-ed, loaded with pointed, critical language that is often more prescriptive than descriptive, Haass departs from many of the day's dominant philosophies—neo-conservatism, unilateralism, preventive (as opposed to pre-emptive) interventionism—and demands a marked shift in American foreign policy. Capitalizing on this American opportunity, for Haass, requires a new form of process-based multilateralism.

Haass's foreign policy playbook is built around a three-pronged "doctrine of integration" (p. 24). First, the United States must create a "twenty-first century concert"—like the nineteenth-century Concert of Vienna—built around a "common commitment to promoting certain principles and outcomes" (p. 24). Second, the United States must translate that commitment "into effective arrangements and actions" (p. 24). Finally, the United States must incorporate others into these arrangements, so they too can "enjoy the benefits of physical security, economic opportunity, and political freedom" (p. 24).

Haass's policy is deeply process-oriented. An open, inclusive, cooperative process is essential both to articulate the world community's "principles and outcomes"—what Haass and others describe as "rules"—and, at times, to confer legitimacy of action (p.24). This process need not start from scratch. A number of international bodies already exist that both codify rules and confer legitimacy. None, however, are sufficiently inclusive or representative to be effective. Such meaningful cooperation, Haass argues, will ultimately protect American interests more than any unilateral alternative. If the United States were to give other powers a "substantial stake in the maintenance of order—in effect, to co-opt them and make them pillars of international society"—other actors would "come to see it in their self-interest to continue working with the United States and damaging to their interests to have a falling-out with the United States" (p. 29).

Such a policy rests on a retooling of traditional notions of sovereignty. Rather than Westphalian absolute sovereignty, Haass argues for a more contractual approach "that recognizes the obligations and responsibilities" in addition to the privileges of statehood (p. 41). Sovereignty, therefore, can be taken away. "The act of genocide is proof that the state has failed in its duty to its citizens. It should, as a result, forfeit some or all of its sovereignty" (p. 43). This shift, however, is not as great a shift as one might think; quite simply, sovereignty today is not absolute. Any modern concert that hopes to enforce

its rule set through cooperative processes cannot be hamstrung by notions of *absolute* sovereignty.

Haass's policy is extremely pragmatic, and therefore, necessarily inconsistent. Inclusion in the global process and alignment with the rules of that process is paramount. Therefore, helping China to develop its "economic opening" and "rule of law" is "likely to be far more significant than high-decibel criticisms" of its human rights record, for example (p.153). To reverse the relationship by placing a single issue above all others would deny "the use of engagement and integration as a mechanism for helping a country meet higher standards" (p. 157). Haass freely admits, though, that such process-oriented pragmatism may lead to inconsistent, case-by-case applications. There is "no avoiding the double standards built into the nonproliferation regime" (p. 86). North Korea, he argues, should face extreme sanctions, possibly military action, should it proliferate weapons of mass destruction (WMDs), while Pakistan, with its tacit approval of the A.Q. Khan network, would receive no such condemnation. To be clear, though, these inconsistent outcomes are achieved through the application of a rule-based, inclusive process; the outcome is inconsistent, but the process is not. Some will certainly find this lack of principle offensive.

There are more problematic facets of Haass's argument, though. First and foremost, Haass's policy is clearly one where the devil lies in the details. Though broad cooperation around common rules sounds encouraging, those rules must be sufficiently specific for the policy to have meaning. Yet with detail and depth comes disagreement. Actors may collectively agree that torture is reprehensible, for example, yet never agree on what "torture" means with sufficient detail to be effective in dealing with anything but the most gratuitous, extreme cases. Haass offers little argument for why any new, more-inclusive processes will be more effective in creating clear, detailed rules.

Haass also skirts two of policy's most salient challenges: rule enforcement and major power disagreement. Enforcement of international rules is a continual challenge. Rules broken today, even in clear and obvious situations, often go unpunished for a host of reasons. Actors may condemn the action but be unwilling to spare resources, or may face domestic political constraints that prevent meaningful action. Rwanda, and now Darfur, spring to mind as examples of rule breaking that the world community began to enforce only well after the fact. True, loosening the barriers of sovereignty and easing the ability to gain "legitimate" status may help. These factors seemed not to be the forces preventing action in Darfur and Rwanda, though. Haass offers little explanation of why new processes will change this situation.

Similarly, Haass is mostly silent on the likely scenario of fundamental discord among the major powers. Haass's concert will "only advance if those who disagree with a given policy forgo the option of actively opposing it" (p. 192). Therefore, maintaining the cooperative process is more critical than achieving consensus within the process. Yet, without consensus—especially major power consensus—the process runs the risk that major powers will either ignore or act counter to the process's results. Would the United States

have invaded Iraq if a genuinely cooperative and inclusive process had voiced a consensus against such an invasion? How would such a move impact the credibility of the process? Thus, to be truly effective, Haass's concert implicitly demands that all actors, including the major powers, allow the open, cooperative process to alter their behavior towards rule compliance. That may be too progressive a notion of sovereignty, especially for the major powers.

On a more conceptual level, though, Haass's argument correctly identifies that the United States cannot respond to today's threats unilaterally. International cooperation is essential to combat terrorist extremists and the proliferation of WMDs, America's most salient threats. The global financial markets and trade relationships, with their inescapable effects on the domestic economy, also rest on broad international cooperation. And, Haass clearly illustrates the perils of a unilateral decision-making process like that which led the United States to invade Iraq. Unilateralism, and certainly isolationism, are correctly discarded as viable policy options. Given America's recent decisions on the Rome Statutes, the Kyoto Protocols, and the Iraq invasion, this call for process-oriented multilateralism is needed more than ever.

His process-based argument is also extremely valuable given the state of today's rulemaking organizations. Many of these bodies are adrift, hampered in their effectiveness both to establish salient rules and to confer legitimacy on international actors. If Haass's argument does nothing more than force reasoned discussion and consideration of the proper role and composition of the U.N. Security Council, the International Criminal Court, and other similar bodies, then it will have been successful.

Thus, like a well-written op-ed, *The Opportunity* both highlights salient policy problems and prescribes change. Though his specific playbook is not perfect, Haass's multilateral prescription is spot on. It is a prescription that American policymakers cannot afford to ignore.

Networks of Democracy: Lessons from Kosovo for Afghanistan, Iraq, and Beyond. By Anne Holohan. Stanford: Stanford University Press, 2005. Pp. xiv, 220 (Paperback). Reviewed by Kristen Eichensehr.

Multilateral interventions have become almost commonplace in the past decade, but the academic literature analyzing interventions is still evolving. In *Networks of Democracy: Lessons from Kosovo for Afghanistan, Iraq, and Beyond*, Anne Holohan contributes to the conversation by examining how the component parts of the United Nations Mission in Kosovo (UNMIK) worked and did not work together. Based on case studies of two Kosovar municipalities, she argues that international interventions function more effectively when they are structured as "network organizations."

Part I of the book describes the theory of network organizations and develops concepts later identified as important to the intervention's success in Banskik and relative failure in Thezren. Using organizational theory, Holohan defines a "network organization" as "the entity resulting when several organizations come together to form a temporary quasi or virtual umbrella organization, with each organization subordinating itself to the umbrella

organization, but without losing its integrity" (p. 33). Holohan argues that a successful network organization requires both trust between members of the international intervention and the local population, as well as an institutional culture that fosters identification by members of disparate organizations with the intervention's goals. "Socially skilled individuals"—individuals adept at making and maintaining relationships with members of other organizations and the local population—facilitate a shared institutional culture by providing a common point of contact for disparate groups. Holohan emphasizes the importance of including the local population in the development of a new democratic system, and she is extremely critical of UNMIK's failure to do so, especially UNMIK's marginalization of talented Kosovars who were employed only as translators and drivers.

In Part II, the depth of Holohan's familiarity with Kosovo and her personal access to the municipal administrations becomes evident. She describes two municipalities, Banshik and Thezren, which are demographically and developmentally similar, and which experienced similar levels of destruction during the conflict. Banshik becomes a success story, and Thezren a failure. Holohan argues that Thezren was organized by its UN Civil Administration (UNCA) municipal administrator (MA) as a classic hierarchical organization. The MA was a retired diplomat who had spent his career working in bureaucracies—experience that was evident in his formal, bureaucratic style, encompassing only the UN staff under his immediate authority. In contrast, the Banshik MA and his deputy—both with military, academic, diplomatic, and banking experience—did not subscribe to the hierarchical view of administration. The Banshik MA viewed the UNCA as a hub and cultivated ties with other organizations involved in the mission—for example, through weekly breakfasts with NATO Kosovo Force (KFOR) leaders—and with the local population. By building social capital and credibility with the local population, the MA became a trusted figure who was called upon to mediate between groups when disagreements arose. The contrast between the MAs in Banshik and Thezren allows Holohan to emphasize the importance of individual leaders and demonstrate that the flexible approach taken by the Banshik MA led to more successful re-development in Banshik than in Thezren.

Throughout the case studies, Holohan relentlessly pushes her theoretical points, while seamlessly weaving the theoretical aspects of network organizations into the specific discussions of the municipalities. For example, Holohan uses illustrations from the municipalities to explain "social embeddedness," which she defines as personal ties between people that help build trust (p. 81). The Banshik MA fostered social embeddedness through hosting dinner parties for both internationals and locals, and frequently eating in the municipality's two restaurants. In Thezren, the MA chose not to live in the municipality and ordered his staff to avoid contact with the local population.

Part III introduces the crucial importance of information and communications technologies (ICTs). According to Holohan, ICTs foster network organization development by "flatten[ing] an organization hierarchy"

and allowing direct communications among all parts of the network (p.100). Holohan discusses the difficulties that arose because the ICTs did not precisely align with the nascent “network organization.” Only some members of the intervention were eligible to have UN email addresses and to use UN equipment, a policy that excluded the non-governmental organizations (NGOs) and other members of the intervention. KFOR specifically excluded itself from the communications network for security reasons. The most useful and frequently used means of communication became mobile phones and commercial email accounts, both of which were outside UNMIK control.

Holohan then evaluates each international actor that played a role in UNMIK. She criticizes the United Nations for its hiring policies (which, she argues, preferred nationality over expertise), for its failure to institutionalize meritocracy, and for its failure to foster sufficient economic development. KFOR comes under fire for its lack of flexibility and steadfast resistance to joining the network organization. Holohan points to “CivPol”—the civilian police force responsible for law enforcement and training of a Kosovar police force—as “the weakest link” in the intervention because of its lack of cohesion resulting from its diverse national origins and small national contingents. CivPol made progress on administrative duties such as issuing driver’s licenses, but failed to solve crimes or train the Kosovar police to do so effectively. In contrast, the Organization for Security and Cooperation in Europe (OSCE) is praised for its flexibility, responsiveness, and willingness to cooperate, though other organizations often prevented cooperation from occurring in practice. NGOs are also praised for their individual innovations and lack of traditional hierarchies. Holohan does level some criticism at NGOs, however, arguing that in competing with each other for donor funding and in protecting their own projects, NGOs failed to become true network organizations. Holohan’s familiarity with and access to the municipalities is a strength of the book, but perhaps causes her to be myopic with regard to the Kosovo intervention as a whole. A logical extension of her study of the municipalities would have been to comment on how the intervention writ large did or did not fit the model of a network organization, but Holohan only hints that the problems she documented at a local level pervaded the higher levels of the intervention headquartered in Pristina. An introductory section providing a brief overview of the history of the Kosovo crisis and intervention would have also been useful to anchor the municipality case studies into the broader historical context, rather than the *in media res* approach that drops readers squarely into the reconstruction period during which the author conducted research in Kosovo.

Holohan has successfully shown that coordination among members of international interventions in the manner of a “network organization” and effective use of ICTs facilitate the goals of interventions. *Networks of Democracy* undoubtedly provides important lessons for international interventions, both present and future, but Holohan’s brief conclusion, which implicates her research for Iraq and Afghanistan, does not evidence the same level of familiarity or depth of research that is the backbone of the Kosovo analysis and does not do justice to the possible applications of the “network

organization" framework to other interventions. Though Holohan does not adequately explore the application of her framework to interventions more generally, the detailed analysis in *Networks of Democracy* will be extremely useful for practitioners who can adapt and apply the ideas to their own situations and to other interventions.

International Legal Theory

The Limits of International Law. By Jack L. Goldsmith and Eric A. Posner. New York: Oxford University Press, 2005. Pp. iii, 262. Price: \$29.95 (Hardcover). Reviewed by Mariana Pargendler.

Jack Goldsmith and Eric Posner, law professors at Harvard and the University of Chicago, respectively, combine efforts in *The Limits of International Law* to provide a sharp reaction to the optimism about the normative force of international law that generally dominates in legal academe. They offer a bold intellectual explanation for why current U.S. foreign policy often chooses to disregard international law.

Rational choice theory, they argue, provides a better explanatory tool for state behavior than conventional theories relying on non-instrumentalist rationales for international law compliance. The authors, however, go further in extending a skeptical attitude towards international law itself. They rebut the existence of any moral obligation to obey international law and argue that state cosmopolitanism is inconsistent with the proper functioning of a liberal democracy.

Goldsmith and Posner try to substitute a tabula rasa for the usual assumption of mainstream scholars—too idealistic and doctrinal, they allege—that states comply with international law for non-instrumental reasons. They bring rational choice theory into play to argue that international law emerges from states' rational self-interested actions in the international arena. In that sense, international law does not represent any kind of constraint on states' behavior contrary to their interest, as scholars often suggest; rather it is the by-product of states' self-interested actions.

The authors spend the vast majority of the book exploring the explanatory power of rational choice theory through several examples concerning customary international law and the law of treaties. Goldsmith and Posner's account of customary law employs a series of cases, from the "free ships, free goods" rule to ambassadorial immunity to demonstrate that there is no such "sense of legal obligation" guiding state behavior. Instead, state behavior is best explained by "behavior regularities"—coincidence of interest, cooperation, coordination, and coercion—arising out of self-interested decision making.

This audacious analysis is then extended to the law of treaties and non-legal agreements. Goldsmith and Posner assert that international agreements do not create any legal obligations for states that shape their behavior. Rather, behavioral regularities explain why states obey the law of treaties. Compliance does not result from an agreement's normative force. States enter into international agreements, they claim, because such arrangements solve

coordination problems. Goldsmith and Posner argue that an international agreement's best equivalent under domestic law is not a contract or a statute, as usually claimed, but instead a non-binding letter of intent. The authors also boldly reduce the common use of legal rhetoric in statecraft to nothing more than sending signals.

Not satisfied with merely depriving international law of its normative force—both in its customary and formalist versions—the authors further expand their argument to assert that not only does international law have no exogenous force on state behavior in practice, but states have no moral obligation to comply with international law even in theoretical terms. Goldsmith and Posner offer numerous, but rather superficial, justifications for why there is no moral obligation to comply. Ultimately, the book is worth more for its rational choice theory model and illustrations than for its attempt to deal with philosophical and political concerns.

The book builds toward the remarkable argument that international law is unable to constrain state behavior in a way that benefits global welfare. Essentially, Goldsmith and Posner seem to be telling those who believe in the normative pull of international law that they must come to terms with a sobering irony: rather than buttressing cosmopolitan and altruistic behavior, the cherished regime of liberal democracies instead legitimates state self-interest. Throughout, a skeptical view of human nature sets the tone of the critique.

It is hard to escape the conclusion that ideological differences are at the heart of why Goldsmith and Posner diverge from the traditional international legal scholastic view. The authors argue from the realist assumption that rationally self-interested behavior by states is not only an inescapable reality, but is good, especially for the United States. Many academics, on the other hand, believe in an ultimate policy goal of global welfare—one that because of externality issues is not synonymous with maximizing the sum of the self-interest of individual states. Goldsmith and Posner do not see the same externality problems, and accordingly, the book does not include any proposals to build better institutions to address coordination failures. Predictably, those of a different ideological bent will loudly disagree.

The title *The Limits of International Law* does not begin to signal the acid attack against international law's purported normative force that lies within. Goldsmith and Posner insist that we should agree that international law is far less important than most scholars would have us believe and that the irrelevance of international law is both inevitable and perfectly acceptable. However objectionable a reader may find this view, *The Limits of International Law* does add vibrant diversity to the ideologically homogeneous climate of the international law literature, while inviting further inquiry into the merits and feasibility of a more cosmopolitan approach. Indeed, one may agree that the authors' rational choice theory model has great descriptive value without also buying into Goldsmith and Posner's prescriptive agenda of diminishing or disregarding international law.

Crimes Against Humanity: A Normative Account. By Larry May. Cambridge: Cambridge University Press, 2005. Pp. xiii, 326. Price: \$25.99 (Paperback). Reviewed by Brittan Heller.

Crimes Against Humanity: A Normative Account, by Larry May, combines philosophy and legal scholarship to approach the problems of international law from a Hobbesian point of view. While Hobbes may be right that life is "nasty, brutish, and short," May's analysis arguably is not. This philosophical treatment of the foundations of international criminal law is the first full-length work of its kind. Its approach is unique and subtle, though cumbersome structural concerns and frequent repetition threaten to overshadow its useful contributions. May's argument proceeds on a novel "moral minimalism" basis, combating critics who have used Hobbes's ideas to argue against global human rights protections and international criminal proceedings. Though the book may be more useful to budding political theorists than to legal scholars, it nevertheless presents both a set of provocative theoretical underpinnings for global jurisdiction and sound challenges to mainstream conceptions of international human rights law. It is worth reading despite its heft.

The argument itself is elegant and rooted in practical concerns. May, a Professor of Philosophy at Washington University in St. Louis, advocates a philosophical foundation for international criminal law that is deeper than mere moral outrage. He posits moral grounds existing outside the structure of international law that justify creating a normative base independent of the standard sources of international law, customary international law, or treaties among states. From Hobbes's moral minimalism, May proposes two principles as justifications for international law. First is the "security principle," which protects a community's basic need for sustenance and physical safety. Adherence to this norm justifies the preservation of a state's sovereignty; neglect or abuse of this norm can validate border intrusions by international groups to redress harms. Second is the "international harm principle," which addresses the damage to humanity that results from dehumanizing mass crimes, state-sanctioned persecutions, and other similar actions. The importance of these principles lies in their universally accepted content. Peremptory norms, such as opposition to genocide, are global ideals agreed upon without a condition of assent; the existence of such standards solves the problem of state sovereignty, since adherence is not a choice and thus not revocable. Additionally, these *jus cogens* norms provide a moral basis separate from the scope of law, making them less vulnerable to criticism.

The Hobbesian backing for this claim challenges the fervor and scope of human rights prosecution. May posits that both of his principles function most efficiently when international jurisdiction is limited to major crimes against humanity committed by or against particular groups. May also suggests restraining the doctrine of command responsibility and limiting the prosecution of national leaders to enhance the security of the state. Taken in combination, these two narrowing ideas would exclude from scrutiny many civil and political wrongs and omit infractions of social and economic rights

almost entirely. This would certainly arouse the ire of those who adhere to more sweeping conceptions of human rights. The benchmark is set at immediate self-preservation and survival needs, which critics could argue is a potentially self-effacing limitation given that the excluded civil, political, social, or economic factors may ultimately affect security and survival. However, May is attempting to provide the strongest basis for international law, which he asserts justifies his focus on universally egregious harms.

Although May writes as if he is aware of his mixed audience of lawyers and philosophers, he should have given greater attention to the written expression of his argument. He proceeds with caution, treating concepts and content gently—perhaps too much so. In an attempt to provide conceptual clarity, some theories are repeatedly discussed without providing sufficient background information. Other ideas and terms coined by May are continuously defined and redefined throughout the book. This phenomenon occurs not only in different chapters, but even within the same segments of a chapter. The book is well-organized overall, but some of its elegance is undermined by structural redundancy. Large segments of the book are dedicated to roadmap-style summaries of the argument. He devotes as much energy placing his claims within an argumentative framework as he does making the claims themselves. The text could have been condensed into a delightful journal-length article; the philosophical argument is not enhanced by its repetition.

In the second half of the book, May offers a series of examples to elaborate on his philosophical principles. The case studies are varied geographically, covering command responsibility prosecution in Bosnia, mass rape trials in Rwanda, and the Pinochet trial in Chile. The book imparts sound advice for human rights practitioners about not overreaching with international law, since its foundation is still in its infancy. However, beyond this recommendation, his use of legal research is wanting. It would have been beneficial for May to provide more substantive information on the legal aspects of the cases instead of merely citing them to illustrate his international legal principles. Doing so would have helped guide practitioners beyond introspection to apply the extra-judicial moral backing and measured pleas for discretion lauded by May.

Ultimately, May's work is, despite its length and construction problems, a measured and elegant philosophical treatise on the foundations and limitations of international law. May's normative analysis challenges us to extend human rights to every human being and trust in the mechanisms of fairness, justice, and law.

International Environmental Law and Asian Values: Legal Norms and Cultural Influences. By Roda Mushkat. Vancouver: UBC Press, 2004. Pp. xvii, 241. Price: \$85.00 (Hardcover). Reviewed by Andrew Park.

Roda Mushkat poses a compelling question by placing international environmental law within the familiar "Asian Tigers" framework. Economists have theorized that a particular set of "Asian characteristics," which together

present an alternative to Western development models, have contributed to the celebrated development of several Asian countries. Her book examines whether such cultural factors affect how international norms regulating environmental policy are mediated and applied within the region. In exploring the topic, Mushkat appropriately incorporates economic perspectives relevant to international trade and a significant amount of geopolitical analysis. Mushkat's is a laudable and ambitious goal, which she approaches with clear and imminently readable prose. The end result, however, misses the mark, largely on account of structural issues that prevent a substantive argument from fully materializing.

The opening chapters nimbly lay out the broad theoretical concerns underpinning the difficult notions of "culture" and "Asian values." In remaining largely abstract, Mushkat successfully presents the tensions between notions of universal norms that transcend culture, geography, and history and the countervailing forces of cultural relativism that question universality altogether. Such a concise summary of complicated and contentious ideas risks oversimplification, but works admirably here. The title of the book, *International Environmental Law and Asian Values*, seems to be appropriately drawn from this theoretical tension. Mushkat's discussion of international human rights norms in this vein offers a tantalizing parallel framework in which to examine environmental rights; indeed, her early discussion suggests that this is the path she will explore. But in the attempt to apply this theoretical construct to the Asian region's approach to environmental policy—the heart of this analysis—the book falls short of its goals.

There is, first and foremost, a definitional problem. Mushkat duly acknowledges that the concepts to which she refers—"Asian values," "culture," and "globalization," to name a few—are difficult to define comprehensively. However, she never offers a viable alternative terminology, one specific enough to stabilize the book's central argument. The result is an unfocused discussion that often remains at a survey level instead of establishing a more deeply rooted analysis. The book's geographic scope, for instance, is massive. There are references to India, Pakistan, Vietnam, Malaysia, the Philippines, Thailand, Korea, Japan, China, and Taiwan (to name a few) throughout the book, and often in rapid succession. Mushkat also includes comparative references to New Zealand and Australia at regular intervals. She takes great pains to avoid referring to any singular notion of "Asian values" from this vast region. But in failing to limit what the term "Asian" encompasses, Mushkat is forced to offer a multitude of examples that end up being too narrow to build a coherent argument. With such a broad geographic palette, there are too many countries to take into account, significantly diluting her arguments.

The book, therefore, has a tendency to read as a list of various environmental treaties, trade agreements, and consensus statements that result from meetings across the globe, often under the auspices of international or transnational organizations like the United Nations or the European Union. In recounting such meetings and their resulting documents, Mushkat offers an

exhaustive account (roughly tabulated in the Appendix) of the various ways in which nations have negotiated with each other regarding environmental issues. Often, however, such accounts function only as illustrative lists. This is partially due to the fact that the book's subheadings tend to be under-explored. Expansive topics like "The Role of Courts" are covered in just over a page (p. 50). Such structural choices have the consequence that potentially fruitful topics more true to the aim of the book are given only cursory treatment.

Several isolated examples serve to illustrate. Mushkat observes that regulators in Asian countries often act as advisors with attenuated enforcement mechanisms. In the case of Japan, she posits that this is partially due to an Asian aversion to confrontation, and thus requests and warnings are a more palatable, and therefore successful, form of regulation (p. 46). Later, Mushkat puts forward the idea that framing environmental protection as a "right" may resonate less strongly with Asian cultures than reframing them as "duties" (p. 77). At another point she argues that natural disasters like the 1997-98 Indonesian forest fire, which spread a haze beyond its borders into neighboring Asian countries, was not effectively dealt with because the environmental agreement in the region (ASEAN) displayed a reluctance to single out any one country for blame (p. 122). Mushkat also argues that in finding expansive environmental rights for its citizens, the Indian Supreme Court's liberal jurisprudence reflects a culture that historically respects democracy and public debate (p. 65). Each of these points offers an opportunity to explore the issue of culture and its intersection with environmental law, and could serve as a potential starting point for a narrower and more substantive exploration. Mushkat does not, however, offer more than a perfunctory mention of these topics before moving on to yet another country or issue.

Mushkat's core arguments tend to be economic or geopolitical in nature, and only obliquely integrated with the idea of culture or law. She suggests that the perception that Asian countries prioritize economic advancement over environmental protections is distorted; but in refuting this claim, Mushkat manages only vague gestures. She also spends a great deal of time establishing the importance of democratic processes by fairly reflecting a minority population's views in environmental policy—concerns which, though certainly valid, are not well-integrated into the overall thesis. In the conclusion, the author potentially undermines the premise of the book altogether in noting that the particular characteristics of environmental policy emerging from the "Asian region" may not be tied directly to any peculiar set of Asian cultural values. They are, she notes, the results of basic developmental trends that happen to have unfolded in Asia (p. 126).

Ultimately, this is too ambitious a project to be contained in the scope of Mushkat's book. Although Mushkat brings substantial knowledge to the table, the proposed question is vast and requires a wide lens to fully address the complexities inherent in any relevant analysis. Taken together, these challenges require a more stringent approach to defining and limiting geography and a more focused discussion of the law. Otherwise, the title of the book remains something of a misnomer, delivering the reader a survey of

various declarations and resolutions that collectively falls short of substantively analyzing either environmental law or Asian values.

Race and Gender Around the World

Erotic Justice: Law and the New Politics of Postcolonialism. By Ratna Kapur. London: The Glass House Press, 2005. Pp. vi, 219. Price: \$32.00 (Paperback). Reviewed by Sandeep C. Ramesh.

In *Erotic Justice: Law and the New Politics of Postcolonialism*, Ratna Kapur, an internationally respected feminist legal critic, reminds us that colonialism did not die alongside the British Empire. Its specter, rather, haunts our contemporary moment. Kapur interrogates this postcolonial haunting by examining sexual subalterns, people whom a society deems sexually impure or subversive to certain notions of cultural integrity. She identifies three such subaltern categories: sex-workers, migrants, and homosexuals. Through this interrogation of sexual subalterns—primarily South Asian subalterns—Kapur works to “bring erotically stigmatized communities from our respective [Eastern and Western] worlds into an inclusive conversation” (p. 11). The result is a probing book that interfaces law, politics, religion, history, and film to foreground a postcolonial understanding of sexual subalterns. Ultimately, however, Kapur falters by means of her own riveting intellectual gymnastics.

To further her goal of fostering dialogue about and between stigmatized communities, Kapur deploys an analytic strategy termed postcolonial feminism. Readers even faintly acquainted with postcolonial studies will correctly guess that Kapur’s methodology remains faithful to the traditional postcolonial school, which favors adopting the standpoint of the oppressed subaltern in order to challenge assumptions of a “progressive narrative of history, a fixed and stable sovereign state and sovereign subject” (p. 6). Instead of presupposing either a stable, liberal, reasoning subject who seeks certain so-called universal rights (à la Martha Nussbaum), or a female subject who seeks redress through a unified and all-embracing *topos* of victimhood (à la Catherine MacKinnon), Kapur favors a thoroughly heterogeneous subject, unbounded by neat categorizations. The postcolonial subject is one who is neither here nor there, but “somewhere in between” the binaries of universal/particular, international/domestic, emancipation/victimhood, and reason/emotion (p. 65).

Armed with a hybridized conception of the female sexual subaltern, Kapur investigates the notion of sexuality as it pertains to culture, politics, and law. Supplementing her analysis with references to film, Kapur organizes her book around three broad, nuanced, and often intersecting issues: sexual purity in India, violence against women, and trafficking and migration of sexual subalterns. In so doing, Kapur attempts to expose the legal repression of these sexual subalterns, a topic which governments and culture have systematically sidelined. The book’s goal, then, is to reclaim discussions of sexual subalterns by pulling them from the margins and placing them at the center of postcolonial discourse.

In the opening chapters, Kapur analyzes the legal regulation of sexuality in India. For example, she notes the contradictions of the Indian legal system, which protects women from rape in the public realm, but fails to recognize marital rape due to a cultural bias designating the domestic realm as sacrosanct and immune to legal intervention. Kapur further problematizes the distinction between public and private forms of rape by noting that Indian law already reaches into the private domain solely when prosecuting homosexuality. Thus, the private sphere remains immune from the law only if it is "the right kind of privacy"—that is, between a husband and wife (p. 35). This type of legal double standard marginalizing Indian wives is precisely what Kapur resists.

Kapur broadens her analysis by linking the contradictory impulses within the Indian legal system's treatment of sexual subalterns to the cultural and political climate in India. She insightfully explains how the Hindu right wing has appropriated the public/private rape distinction to promote the twin goals of nationalism and a return to traditional culture. Specifically, the Hindu right has asserted that public, legally recognized instances of rape are performed by Muslim men against innocent Hindu women, while simultaneously claiming that Hindu women must bear their own burden for marital rape. Examining how right-wing Hindus have at once promoted anti-Muslim sentiment along with a traditional patriarchal construction of wifely subordination leads Kapur to conclude that the law is fundamentally hypocritical. On one hand, the law claims to promote women's rights; on the other hand, it legitimizes harmful nationalistic and patriarchal objectives of the Hindu right wing.

While Kapur fails to propose a concrete strategy to reform neocolonialist laws, she does imply that rejecting rhetoric that depicts subalterns as pure victims (of law, culture, and society) constitutes a prerequisite for emancipatory change. In particular, victim rhetoric ushers in domestic legal protections that curb—rather than expand—women's rights. The legal treatment of sex trafficking is indicative. Kapur highlights the international tendency to conflate sex trafficking (generally, the act of forcing subalterns into prostitution) with economic migration not involving forced sex work. This conflation, evident in the U.S. Victims of Trafficking and Violence Protection Act of 2000, creates the dangerous presumption that subalterns who migrate away from home are necessarily involved in illegal trafficking as opposed to benign efforts to take advantage of global job markets. Kapur argues that this presumption treating migratory subalterns as trafficking victims in turn induces countries to impose protectionist domestic measures limiting women's movement and restricting their rights to migrate under the guise of protecting them from being trafficked.

Despite Kapur's lucid application of the traditional postcolonial rubric to contemporary issues facing sexual subalterns in South Asia and elsewhere, the fatal flaw of her analysis lies in her theoretical framework itself, which undermines the emancipatory thrust of her project. Throughout the book, Kapur points out how seemingly benign motives reciprocally engender

negative outcomes that shackle subaltern rights. Paradoxically, Kapur's own analysis suffers from the same short-circuit.

First, Kapur relentlessly details the suffering of legally and socially maligned sexual subalterns. While the cataloguing of harm befalling sexual subalterns serves Kapur's consciousness-raising goal, such a literary strategy ultimately reproduces the image of the voiceless victim. In failing to incorporate the first-person voices of subalterns, Kapur functions as a chronicler of sexual marginalization, implicitly constructing supposedly heterogeneous subalterns as homogenously mute. In other words, Kapur adopts the colonialist scientific gaze by treating sexual subalterns as objects to be analyzed and spoken for. Far from producing an inclusive conversation, Kapur narrates indigenous subaltern voices out of the script. Subalterns, therefore, become colonial victims par excellence, dependent upon Kapur's dominant voice.

Second, Kapur's unfettered promotion of postcolonial tropes like "hybridity," "cultural diversity," and "global resistance" smacks of capitalist buzzwords like "dispersive force," "product diversification," and "global marketplace." Indeed, as noted social theorist Slavoj Žižek articulates, "[p]erhaps the time has come to resuscitate the Marxian insight that Capital is the ultimate power of 'deterritorialization' which undermines every fixed social identity, and to conceive of 'late capitalism' as the epoch in which the traditional fixity of ideological positions (patriarchal authority, fixed sexual roles, etc.) becomes an obstacle to the unbridled commodification of everyday life" (SLAVOJ ŽIŽEK, *TARRYING WITH THE NEGATIVE: KANT, HEGEL, AND THE CRITIQUE OF IDEOLOGY* 216 (1993)).

Kapur's triumphant application of postcolonial feminist methodology is simultaneously her gravest failure, for the myopic focus on particular subalterns eclipses a consideration of the more universal forces of capitalism. While the aim of reframing cultural and legal discourses surrounding sexual subalterns retains importance, it requires a concurrent critique of capital; otherwise, subalterns are freed from the repression of culture and law only to find themselves enslaved by the structural forces of commodification. Capitalism, it might be said, ultimately renders us all subalterns. Perhaps, Kapur's proactive goal of championing subaltern rights cabins and silences the inclusive conversation she envisions by effectively greasing the wheels of *das Kapital*.

Affirmative Action Around the World: An Empirical Study. By Thomas Sowell. New Haven: Yale University Press, 2004. Pp. x, 256. Price: \$17.00 (Paperback). Reviewed by Monica C. Bell.

Renowned black economist Thomas Sowell's *Affirmative Action Around the World* is an extensively researched, accessibly written, and refreshingly comparative addition to the conservative canon. Though readers will quickly realize that Sowell is a vehement opponent of affirmative action, the ideas presented in this book deserve rigorous engagement by scholars of ethnic conflict and proponents of race-conscious policy. The book has two distinct

but interrelated purposes: First, Sowell wishes to “cut[] through the jungle of semantics” surrounding the affirmative action debate (p. x). Second, and more centrally, Sowell seeks to offer empirical data on the results of affirmative action internationally.

Despite Sowell’s efforts to focus specifically on affirmative action, this book is more valuably read as an exposition on the broader dynamics of ethnic conflict. Sowell argues convincingly that mishandled affirmative action policy can set the stage for ethnic tension. He does not, however, successfully confirm a direct causal link between affirmative action and such conflict. As a result, one often has the sense that he structured his research with a conclusion in mind.

Despite employing some traditional anti-affirmative action arguments, Sowell is unorthodox in his global case study of preferential policies. His chapter on India is especially persuasive, proposing that policies designed to benefit “untouchables” are underutilized because the neediest people lack sufficient resources to take such opportunities. Sowell, a libertarian, maintains: “[S]tatesmanlike political leaders would have to tell taxpayers the . . . unpalatable truth that more money is needed to cover complementary costs that the poorest simply cannot afford”(p. 52). Though Sowell remains true to his belief that self-discipline can overcome a “culture of indifference,” he acknowledges that a fundamental shortcoming of affirmative action is its inadequacy at remedying group inequalities. Sowell concludes that society must address inequality by equipping children with firmer educational and economic foundations. It is unfortunate that Sowell buries this and other nuanced points in middle chapters while boilerplate arguments are easily accessible in the introduction and conclusion.

In the chapter on Sri Lanka, Sowell compellingly differentiates social disparities from the politicization of those disparities. Although inequities existed between the Sinhalese and Tamil for decades, Sowell argues that only in the past fifty years have identity politics become a consequence of those disparities. Sowell ties the resultant inter-ethnic violence to preferential policy, but by his own admission, ethnic nationalism and political ambition appear to be the true sources of tension in Sri Lanka. Sowell specifically points to Sinhalese politician Solomon Bandaranaike as “[t]he key figure in the transformation of a general resentment against the old elite . . . into a specific program of preferential treatment” (p. 84-85). This begs the question of whether politicization of social disparity is generally detrimental, as Sowell implies, or if the motivation behind politicizing inequality is more important. If increased group identity had arisen from a Sinhala grassroots movement instead of Bandaranaike’s political aspirations, would there have been such negative repercussions? Alternately, would Sowell contend that it is better for unequal groups to preserve the status quo, blissfully disengaged from the political implications of and potential political solutions to their unfortunate societal station?

Although the book’s central thesis is that affirmative action engenders ethnic conflict, Sowell devotes substantial attention to conflict issues tangential to affirmative action. The most conspicuous example is the chapter

on Nigeria. Like most postcolonial African nations, Nigeria was created by imperialists without regard for ethnic group integrity. Accordingly, ethnic conflict has been an inescapable feature of post-independence Nigeria and, historically, political leaders have used patronage politics to favor their own ethnic group over others. To minimize cronyism, Nigeria's constitution states that the government should "reflect the federal character of the country," or be drawn from a diverse array of ethnic groups. Sowell avoids claiming that affirmative action is the impetus for ethnic conflict, arguing instead that deep-seated ethnic polarization spawned both the preferential policies and the violent inter-group clashes. While this characterization is compelling, the tenuous connection between Nigerian preferential policy and ongoing ethnic polarization lends little credence to his broader argument. The Nigeria case primarily functions to extend the "around the world" study beyond the United States and Asia.

Sowell occasionally frames data in misleading ways. For example, he claims that preferential policies create disincentives for preferred groups, citing a study of historically black colleges that found that African-American students planning post-graduate study felt little pressure to work hard because they believed desirable positions would be set aside for them (p. 14). Though Sowell never mentions the timing of the study within the text, the endnotes reveal that this data came from a book written in 1973 (p. 202). Even if it were true that young African-Americans held these views in the early 1970s, their confidence in affirmative action guarantees probably lessened after *Bakke* (1978), *Croson* (1989), *Adarand* (1995), and *Gratz* (2003), to mention just a few U.S. Supreme Court cases limiting the scope and application of preferential policies (*Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); *Gratz v. Bollinger*, 539 U.S. 244 (2003)). While these types of arguments add to the book's shock value, they leave much to be desired. Readers should be vigilant about the sources of Sowell's more extraordinary claims.

Ultimately, the greatest shortcoming of this book may be what was excluded from Sowell's analysis. First, there is no explanation of his reasons for selecting these particular countries for case studies. Why did he not elaborate on affirmative action policies in Britain, Canada, or Australia, fellow western common law countries with lively affirmative action debates? Second, there is little discussion of the relative value of different types of preferential policies. Though Sowell would likely oppose all forms of race preference as a matter of principle, a sophisticated argument differentiating between various forms of preferential policy would be more convincing to those who do not share his ideology. It might also be useful for Sowell to discuss the effects of educational affirmative action versus affirmative action in employment. Third—and most important—the book lacks a comprehensive discussion of alternatives to affirmative action and possible ramifications of other options. Though Sowell initially proposes a systemic approach in the thought-provoking chapter on India, by the final chapter he merely suggests a "social process" in which groups improve themselves over time (p. 193-94). It

is unclear what took place between Chapters Two and Seven to alter his outlook.

Affirmative Action Around the World is recommended, with reservations, to readers seeking a novel perspective from the right on the origins and dynamics of ethnic conflict. Though Sowell attempts to show causation between affirmative action and devastating ethnic and racial tension in India, Malaysia, Sri Lanka, Nigeria, and the United States, he succeeds only in implicating preferential policy as one of many factors affecting inter-group hostility. He introduces a wealth of empirical data to the affirmative action debate, but his analysis sometimes leads to dubious conclusions. Sowell does not fully meet his goal of cutting through the semantics, if only because he is so instinctively dismissive of all affirmative action policy. *Affirmative Action Around the World*, though stimulating, is ultimately less rewarding than it could have been had Sowell subjected his own preconceptions to rigorous analysis.

